Filed 8/22/19 Conservatorship of Farrant CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

Conservatorship of the Person and Estate of NORMA FARRANT.	2d Civil No. B289203 (Super. Ct. No. 56-2016-00483787-PR-CP-OXN) (Ventura County)
ANGELIQUE FRIEND, as Conservator, Petitioner and Respondent, v. DUANE FARRANT, Objector and Appellant.	

Respondent Angelique Friend, a professional fiduciary, was appointed conservator of the person and estate of Norma Farrant (conservatee). Duane Farrant, conservatee's son, appeals from an order granting respondent's petition to sell a residence allegedly owned by him and conservatee. Appellant claims that he is the sole owner of the property. He requests that we "reverse the

Superior Court's Order directing the sale of the Property." We dismiss the appeal as moot.

Factual and Procedural Background

In May 2017 respondent filed a petition requesting that the probate court order the sale of a residence at 3023 Shirley Drive in Newbury Park (the residence). The petition alleged that conservatee and appellant each owned a one-half interest in the property as tenants in common. The petition continued, "The conservatee has zero liquid assets to provide for her health, maintenance, and support. . . . The conservatee . . . is residing at Royal Gardens, an assisted living facility . . . . The conservatee's estate cannot afford the costs of maintaining [the residence] as well as the expenses of an assisted living facility." "Since [respondent's] appointment as Conservator . . . no payment has ever been made to . . . Royal Gardens. Royal Gardens is currently awaiting payment."

In September 2017, the probate court appointed Lindsay Nielson as referee. (Code Civ. Proc., § 873.010, subd. (a).) It directed him to market and sell the residence.

On February 20, 2018, the probate court conducted a hearing on whether the residence should be sold for $670,000 pursuant to a contract executed by Nielson. Appellant appeared in propria persona. Respondent told the court that conservatee owed Royal Gardens more than $30,000. "So we are definitely at a deficit each month, and it's just accruing and accruing. And they're not going to be accommodating if we don't get them at least paid up to date."

Over appellant's objection, the court approved the sale of the residence. It ordered appellant and all other occupants to permanently vacate the residence on or before April 1, 2018.

In March 2018 appellant filed an application for an order setting aside the probate court's order directing the sale of the residence. At the hearing on the application, appellant again appeared in propria persona. He stated that "a couple of weeks ago" he had discovered that conservatee "signed over the whole house to me." Appellant protested, "[T]he sale shouldn't be going on because the house is mine." "[I]t's all mine."

The probate court denied appellant's application to stop the sale of the residence. It explained: "[M]y primary concern has been Mom's care. . . . [T]he only way I can get there is if I get this house sold." When it is sold, "[h]alf of [the sale proceeds] could go for Mom's care, half of it would go into your [appellant's] pocket. . . . And then we can deal with debits and credits. If it's all yours, then the estate would owe you money. If it's all hers, then they can fight you over that over the course of time." "[T]here's a possibility . . . that you'll wind up with all of it, a possibility that you'll wind up with half . . . , or the possibility you'll wind up with none of it." "[L]et's get the home sold, let's create the fund, let's get Mom subsidized as to half. Let's get the other half in your pocket." "All those other issues, we're going to deal with later on. . . . [W]e will have trials, we'll be able to adjudicate title. . . . But not today and not now."

On April 2, 2018, appellant filed a notice of appeal stating that he was appealing from the February 20, 2018 "Order Directing the Sale of Real Property." Also on April 2, 2018, referee Nielson filed an ex parte request for an order compelling appellant and his brother, Joshua Farrant, to vacate the residence. Nielson alleged that, because they had refused to vacate, "this sale transaction is in jeopardy of failing."

At a hearing on April 10, 2018, appellant was represented by counsel. The probate court ordered the issuance of a writ of possession "for the immediate removal of [appellant] and Joshua Farrant and any other occupants from the [residence]." It denied appellant's request for a stay pending appeal. The court said that, after the residence is sold, "we'll talk about it . . . in terms of allocation of funds. . . . I don't want to pre-adjudicate that because it may well be that the asset is entirely [appellant's] and not the conservatorship estate['s]."

On April 16, 2018, appellant filed in this court a petition for a writ of supersedeas and request for a temporary stay. On April 18, 2018, we denied the petition.

Letter to Counsel

We sent a letter to counsel requesting the filing of supplemental letter briefs responding to the following three questions: (1) "Was the property sold?" (2) "Assuming the property was sold, should the appeal be dismissed as moot?" (3) "'A case is moot when the reviewing court cannot provide the parties with practical, effectual relief.' (*City of San Jose v. International Assn. of Firefighters, Local 230* (2009) 178 Cal.App.4th 408, 417-418.) Assuming the property was sold, what practical, effectual relief can this court provide to appellant if the probate court erred as claimed by appellant in his opening brief?" In their supplemental letter briefs, both parties acknowledge that the property was sold on May 15, 2018.

The Appeal Must Be Dismissed as Moot

The appeal is pursuant to Probate Code section 1300, subdivision (a),[1] which authorizes an appeal from the probate

[1] All further statutory references are to the Probate Code.

court's order "[d]irecting, authorizing, approving, or confirming the sale . . . of property." Pursuant to section 1310, subdivision (a) (section 1310(a)), the probate court's order approving the sale of the residence was initially "stayed by appellant['s] appeal." (*East Bay Regional Park Dist. v. Griffin* (2016) 2 Cal.App.5th 734, 743 (*East Bay*).) Section 1310(a) provides in relevant part, "*Except as provided in subdivision[] (b)* . . . , an appeal pursuant to Chapter 1 (commencing with Section 1300) stays the operation of the judgment or order." (Italics added.) The exception of section 1310, subdivision (b) (section 1310(b)), provides: "Notwithstanding that an appeal is taken from the judgment or order, for the purpose of preventing injury or loss to a person or property, the trial court may direct the exercise of the powers of the fiduciary . . . . *All acts of the fiduciary pursuant to the directions of the court made under this subdivision are valid, irrespective of the result of the appeal. An appeal of the directions made by the court under this subdivision shall not stay these directions*." (Italics added.)

At the April 10, 2018 hearing on appellant's request for a stay, the probate court invoked the exception of section 1310(b). It declared, "[Section] 1310(b) says there is no stay." The court's minute order states, "This court's direction to sell the asset was at the request of the conservator . . . to pay for conservatee's continued care and maintenance. That direction falls squarely within Probate Code §1310(b) to protect conservatee's person and property." Thus, the automatic stay of section 1310(a) "was effectively lifted when the court issued the section 1310(b) order." (*East Bay*, *supra*, 2 Cal.App.5th at p. 743.)

"Where, as in the instant case, the trial court's order directs the very act which constitutes the subject matter of the appeal,

the [section 1310(b)] exception [to the automatic stay of section 1310(a)] operates to effectively deprive the appellant of his appeal," thereby rendering the appeal moot. (*Gold v. Superior Court* (1970) 3 Cal.3d 275, 282 (*Gold*); accord, *East Bay*, *supra*, 2 Cal.App.5th at p. 744; see also *Kane v. Superior Court* (1995) 37 Cal.App.4th 1577, 1584 ["while an order . . . may be appealed [citation], the language the Legislature used in enacting [section 1310(b)] clearly empowers a trial court to direct such order to be immediately carried out unaffected by any subsequent appeal of the order, and without regard to the possible outcome on appeal"].)

"We recognize depriving a litigant of his or her right to appeal is an extraordinary measure. But the Legislature appears to have determined that, in certain cases, expeditious resolution of disputes is more important than allowing for a right of review." (*East Bay*, *supra*, 2 Cal.App.5th at p. 744, fn. omitted.)

Appellant claims that section 1310(b) does not apply where, as here, the trial court "exceeded its jurisdiction" by ordering the sale of property that was not owned by the conservatee. "Generally a court exceeds its jurisdiction only by contravening certain defined limitations on the exercise of its powers [citation]; ordinary mistakes of law or procedure do not constitute acts in excess of jurisdiction [citation]. [¶] An error in excess of jurisdiction does not render a judgment a nullity; rather, the judgment 'is valid until it is set aside.' [Citation.]" (*LAOSD Asbestos Cases v. Elements Chemicals Inc.* (2018) 28 Cal.App.5th 862, 870-871.) We need not determine whether the alleged error here would be ordinary error or in excess of the court's jurisdiction. Nothing in section 1310(b) suggests that the Legislature intended to restrict its application to ordinary error.

Section 1310(b) provides, "*All acts* of the fiduciary pursuant to the directions of the court made under this subdivision are valid, irrespective of the result of the appeal." (Italics added.)

Appellant argues that the appeal is not moot because we "can rule that the Probate Court abused its discretion by ordering the sale under Probate Code § 1310(b) without an affirmative showing of extraordinary circumstances involving potential injury or loss of the sort contemplated by § 1310(b)." (Bold and italics omitted.) Section 1310(b)'s exception to the automatic stay rule "lies . . . only in cases presenting extraordinary circumstances clearly requiring direction by the court for the sole purpose of preventing injury or loss to the person or property of the conservatee. To fulfill this legislative purpose the statutory exception must be narrowly construed and carefully restricted. The trial court retains jurisdiction to order the exercise of the conservator's powers only in extraordinary cases, and the burden of establishing such extraordinary circumstances is on the party relying on the exception." (*Gold*, *supra*, 3 Cal.3d at p. 285.)

In arguing that the probate court abused its discretion by making the section 1310(b) order, appellant is purporting to appeal from that order, which was made on April 10, 2018. We lack jurisdiction to consider the appeal because appellant did not file a notice of appeal from the section 1310(b) order. The only notice of appeal was filed on April 2, 2018, eight days before the section 1310(b) order. The notice of appeal states that appellant is appealing from the February 20, 2018 order "Directing the Sale of Real Property." Section 1310(b) implies that the April 10, 2018 order was separately appealable. It provides, "An appeal of the directions made by the court under this subdivision shall not stay these directions." (See *East Bay*, *supra*, 2 Cal.App.5th at p. 742

["Appellants timely appealed the section 1310(b) order"].) "The time for appealing a judgment is jurisdictional; once the deadline expires, the appellate court has no power to entertain the appeal. [Citation.]" (*Van Beurden Ins. Services*, *Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56.)

If appellant had timely filed a notice of appeal from the section 1310(b) order, we would conclude that the probate court did not abuse its discretion in making the order. "'An abuse of discretion will be found only where the trial court's decision exceeds the bounds of reason or contravenes the uncontradicted evidence.' [Citation.] We will reverse for abuse of discretion only if there was no reasonable basis for the trial court's action. [Citation.]" (*Garcia v. County of Sacramento* (2002) 103 Cal.App.4th 67, 81.) Respondent's representations concerning conservatee's need for funds provided a reasonable basis for directing that the residence be sold "for the purpose of preventing injury or loss" to the conservatee. (§ 1310, subd. (b).) During the April 10, 2018 hearing on appellant's request for a stay, respondent's counsel said: "[Conservatee is] at Royal Gardens, has been there for the last ten months. Royal Gardens has not received any payment. They are threatening to evict her. There is a $37,750 indebtedness to Royal Gardens. And if she's removed from the property she . . . will be in dire harm." The court stated: "[T]he reality is that we've been at this for many, many, many months. We're at the close of escrow. And we're going to close this and . . . subsidize the care of the conservatee."

"[E]ven if the probate court erred, there is no relief we can provide to appellant[] in connection with [his purported] appeal of the section 1310(b) order." (*East Bay*, *supra*, 2 Cal.App.5th at p. 745.) We cannot undo the sale of the residence. (*Id*. at p. 746.)

The sale "pursuant to the directions of the court made under [section 1310(b) is] valid, irrespective of the result of the appeal." (§ 1310, subd. (b).) If appellant had appealed the section 1310(b) order, the appeal would not have stayed "the directions made by the court under [section 1310(b)]." (*Ibid*.) "When no effective relief can be granted, an appeal is moot and will be dismissed. [Citation.]" (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1316.)

Appellant contends that we "can provide . . . relief" by "order[ing] the proper allocation of the proceeds of the sale which is still on deposit with the court." But this issue is premature and not before us in the present appeal. The proper allocation of the sale proceeds remains to be decided by the trial court.

Appellant asserts that the residence was sold "subject to a Lis Pendens" that he had recorded five days before the sale. "Therefore, the purchaser of the Property is not a bona fide purchaser for value." The alleged recording of a lis pendens does not affect the validity of the sale of the residence pursuant to section 1310(b). "'The purpose of a lis pendens is to give constructive notice of an action affecting real property to persons who subsequently acquire an interest in that property, so that the judgment in the action will be binding on such persons even if they acquire their interest before the judgment is actually rendered.' [Citation.]" (*Palmer v. Zaklama* (2003) 109 Cal.App.4th 1367, 1375.) "'Once a lis pendens is filed, it clouds the title . . . until the litigation is resolved or the lis pendens is expunged.' [Citation.]" (*Id.* at p. 376.) Our dismissal of the appeal as moot resolves the litigation by leaving intact the trial court's order that the residence be sold. (See *In re Jasmon O.* (1994) 8 Cal.4th 398, 413 ["Normally the involuntary dismissal of

an appeal leaves the judgment intact"]; *County of Fresno v. Shelton* (1998) 66 Cal.App.4th 996, 1005.)[2]

Appellant's remedy is to seek reimbursement from conservatee's estate. In her supplemental letter brief, respondent concedes: "The relief Appellant seeks is already available to him as the determination of ownership was continued by the Superior Court until a later date at the time of this appeal. Appellant simply needs to bring a motion and request an evidentiary hearing to determine the ownership of assets under the control of the conservatorship estate."

Disposition

The appeal is dismissed as moot because "there is no relief we can grant appellant[] in connection with [the] appeal." (*East Bay*, *supra*, 2 Cal.App.5th at p. 747.) Respondent shall recover her costs on appeal.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J. PERREN, J.

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[2] As to the lis pendens issue, in her supplemental letter brief respondent requests that we take judicial notice of various matters. Since the lis pendens issue has no bearing on the outcome of this appeal, we deny the request as moot. We also deny it because respondent failed to file a separate motion as required by rule 8.252(a)(1) of the California Rules of Court. (See Eisenberg, Horvitz & Wiener, Cal. Prac. Guide: Civil Appeals & Writs (The Rutter Group 2018) ¶ 5:161, p. 5-61 ["A request for judicial notice *must* be made by *formal noticed motion . . . filed separately* from the moving party's brief"].)

Glen Reiser, Judge

Superior Court County of Ventura

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